

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

1096
CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

SEP 30 2021

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

Elizabeth Sines, et al

Plaintiffs

v

Case No: 3:17-cv-072-NKM

Jason Kessler, et al

Defendants

MOTION FOR DISCOVERY SANCTIONS AGAINST PLAINTIFF

THOMAS BAKER, PURSUANT TO FED.R.CIV.P. 37

Comes Now the Defendant, Christopher Cantwell, and, he Moves this Court to Sanction Plaintiff Thomas Baker for failure to make initial disclosures as required by Fed.R.Civ.P. 26. In support, Cantwell states as follows:

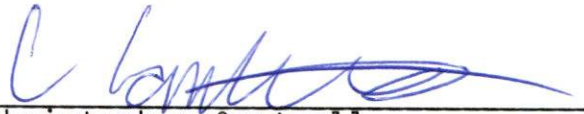
- 1) Discovery in this matter closed April 30, 2021.
- 2) On August 30, 2021, Plaintiff Thomas Baker made his initial disclosures pursuant to Fed.R.Civ.p. 26 which were due in 2017. ("disclosures")
- 3) The disclosures that have been made, attached, are also obviously evasive and incomplete as the names of the disclosed witnesses have been redacted. disclosures p 3-4. Further, the document and damages disclosures are vague, boilerplate, and, do not include copies of any of the relevant documents. disclosures p 4-5.
- 4) Fed.R.Civ.P. 37(a)-(c) provides for the sanction of parties who fail to make disclosures or who make evasive and incomplete disclosures. Good faith conference with the Plaintiff about this issue is not

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available because the lateness of the disclosure is essentially irremediable and because the conditions of confinement at the United States Penitentiary ("USP") -- Marion Communications Management Unit ("CMU") prevent Cantwell from meaningfully communicating with Plaintiff's counsel prior to the scheduled trial deadline. Further, Baker's conduct in making evasive disclosures four months after the close of discovery is the epitome of bad faith conduct which cannot be remediated by conference with Plaintiff.

- 5) Because Baker's disclosures are evasive and incomplete, they must be treated as non-disclosures. Fed.R.Civ.P. 37(d)(4). As such, the Court must exclude all of the evidence given in the disclosures from use as "evidence on a motion, at a hearing, or at a trial." Fed.R.Civ.P. 37(d)(c). As such, Cantwell asks that Baker be barred from testifying at trial, and, that Baker be ordered to provide the full name of every witness identified in the disclosures and that they also be barred from testifying at trial. Further, Cantwell asks that Baker be barred from presenting any evidence at trial that he was injured as the result of any act committed by any Defendant, including because of James Fields' car accident. And, because of the obvious bad faith, Cantwell asks that the following adverse inference instruction be given to the jury:

"In this matter, one of the Plaintiffs, Thomas Baker, refused to comply with the rules of the discovery and refused to timely identify medical evidence and other evidence to the Defendants. From this, you may infer that, had Baker disclosed the medical and other evidence, it would have shown that Baker was not injured by the acts of the Defendants, particularly by any act of Christopher Cantwell."

Respectfully Submitted,



Christopher Cantwell
USP-Marion
PO Box 1000
Marion, IL 62959

CERTIFICATE OF SERVICE

I hereby certify that this Motion for Discovery Sanctions was mailed to the Clerk of the Court, 1st Class Postage prepaid, for posting upon the ECF, to which all other parties are subscribed, and, was handed to USP-Marion staff members Nathan Simpkins and/or Kathy Hill for electronic transmission to the Court, this 17th day of September, 2021.



Christopher Cantwell

CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISELWEY,
MARISSA BLAIR, APRIL MUNIZ, HANNAH
PEARCE, MARCUS MARTIN, NATALIE
ROMERO, CHELSEA ALVARADO,
THOMAS BAKER and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
"AZZMADOR" RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSELY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS, LEAGUE
OF THE SOUTH, JEFF SCHOEP, NATIONAL
SOCIALIST MOVEMENT, NATIONALIST
FRONT, AUGUSTUS SOL INVICTUS,
FRATERNAL ORDER OF THE ALT-
KNIGHTS, LOYAL WHITE KNIGHTS OF THE
KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3: 17-cv-00072-NKM

PLAINTIFF BAKER'S RULE 26(a)(1) DISCLOSURES

Plaintiff Thomas Baker, through his undersigned counsel, hereby makes the following supplemental initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1) and 26(e).

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These disclosures supplement the initial disclosures previously filed by Plaintiffs in this case. Nothing in these supplemental initial disclosures constitutes, or is intended to constitute, a waiver of any claim, right, or defense in this case or otherwise. Plaintiff Baker continues to investigate matters related to the litigation, may become aware of additional information through discovery or otherwise, may assert additional claims, and also may become aware of new reasons why information presently known may be relevant to the claims in this action. Moreover, the issues raised in this matter may require analysis by retained experts. Plaintiff Baker reserve the right to supplement, revise, and/or correct these initial disclosures. Furthermore, Plaintiff Baker expressly reserves all applicable privileges, including without limitation the attorney-client privilege and the work product doctrine, and makes these disclosures subject to those privileges.

The following are the disclosures required by Federal Rule of Civil Procedure

26(a)(1)(A) and 26(a)(1)(D):

- 1. The name, and if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), based on his current knowledge, information, and belief and subject to further investigation, discovery, and analysis by experts, Plaintiff Baker discloses the following individuals likely to have discoverable information that may be used to support his claims. The following disclosures are in addition to the individuals identified in Plaintiffs' Initial Disclosures. Plaintiff Baker reserves the right to amend or supplement these disclosures, including as provided by Fed. R. Civ. P. 26(e). The following disclosures do not include persons whose testimony is likely to be used solely for impeachment, rebuttal, or expert witness testimony, who will be disclosed in accordance with the schedule set by the Court.

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Consistent with their obligations under the Federal Rules of Civil Procedure, and of this Court, Plaintiff Baker will supplement this list as information concerning the identity of these individuals becomes available.

NAME	CONTACT INFORMATION	TOPICS FOR INITIAL DISCLOSURES
Thomas Baker	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Certain Plaintiffs' injuries; Certain Defendants' and co-conspirators' actions at, among other things, the August 12 "rally."
Thomas [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
Frank [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
Adam [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
J. Kent [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
John Ausn [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
Kelsey [REDACTED], PA	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
William [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
Jay [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.

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Sean [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
Clark [REDACTED], MD	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.
James [REDACTED]	c/o Cooley LLP, 1299 Pennsylvania Ave., N.W., Suite 700, Washington, DC 20004	Plaintiff Thomas Baker's injuries.

Expert disclosures will be made in accordance with the Court's scheduling order and Rule 26(b)(2). Plaintiff Baker reserve the right to use the testimony of other witnesses whose identity may be subsequently learned through discovery or other means.

- 2. A copy of, or description by category and location of, all documents, data compilations and tangible things in the possession, custody or control of the party, and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii), based on current knowledge, and subject to further investigation, discovery, and analysis by experts, Plaintiff Baker hereby discloses the following categories of documents and things in his possession, custody or control that he may use to support his claims. Plaintiff Baker reserves the right to amend or supplement these disclosures as provided under Fed. R. Civ. P. 26(e). The following disclosures do not include documents and things that are likely to be offered solely for impeachment:

1. Documents concerning the identity, name, date of birth, age, citizenship and/or residency of Plaintiff Baker.
2. Documents related to the Events including, but not limited to, photographs, videos, electronic communications, and written recollections.
3. Medical documents relating to Plaintiffs' injuries.

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- 3. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.**

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii), Plaintiff Baker discloses that he is entitled to recover damages in the form of, *inter alia*, compensatory damages, punitive damages, statutory damages, attorneys' fees, costs, and interest. Plaintiff Baker anticipates that damages calculations will depend upon expert analyses and testimony to be developed and disclosed according to the schedule set by the Federal Rules of Civil Procedure and the Court. Subject to the foregoing, Plaintiff Baker has certain financial, medical, and employment records that may be relevant to damages calculations.

- 4. Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action to indemnify or reimburse for payments made to satisfy the judgment.**

Not applicable.

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Dated: August 30, 2021
Washington D.C.

Respectfully submitted,

/s/ David E. Mills

David E. Mills (*pro hac vice*)
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Samantha A. Strauss (*pro hac vice*)
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Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2021, I served the foregoing upon the following counsel and *pro se* defendants, via electronic mail, as follows:

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David L. Hauck
David L. Campbell
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Counsel for Defendants National Socialist Movement, Nationalist Front, Jeff Schoep, Matthew Heimbach, Matthew Parrott and Traditionalist Worker Party

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Counsel for Matthew Heimbach, Matthew Parrott and Traditionalist Worker Party

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c/o Dillon Hopper
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Elliott Kline
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deplorabletruth@gmail.com
eli.r.kline@gmail.com

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I hereby certify that on August 30, 2021, I also served the foregoing upon the following *pro se* defendant, via first class mail, as follows:

Christopher Cantwell
Christopher Cantwell 00991-509
USP Marion
U.S. Penitentiary
P.O. Box 2000
Marion, IL 62959

/s/ David E. Mills

David E. Mills (*pro hac vice*)

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Charlottesville Division

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(Doc 1047)

PURSUANT TO FED.R.CIV.P. 37

Comes now the Defendant, Christopher Cantwell, and, he makes the following Objections to the Plaintiff's Preliminary List of Witnesses (Doc 1047) Pursuant To Fed.R.Civ.P. 37(c)(1) and otherwise. In support, Cantwell states as follows:

- 1) Fed.R.Civ.P. 37(c)(1) provides, in pertinent part, that:
"If a party fails to provide information or identify a witness as required by Rule 26(a) [lay witnesses] or (e) [expert witnesses], the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or, at a trial, unless the failure was substantially justified or harmless."
- 2) Cantwell objects to the following witnesses being called at trial that Plaintiffs have not previously disclosed to him:
 - a) Jessica Alvarado;
 - b) Allen Groves;
 - c) Sanjay Suchak;
 - d) Devin Willis.
- 3) Cantwell objects to the following expert witnesses being called at

trial because the Plaintiffs have not previously disclosed either

then or their expert reports to him:

- a) Julie Convisser;
- b) Stephen Fenton;
- c) Nadia Webb;
- d) David Webb (it is not clear whether Webb is a fact or expert witness, but, Cantwell also objects to Webb as an undisclosed fact witness).

4) Cantwell objects to the following expert witnesses being called at trial because their expert reports have not been disclosed to him:

- a) Deborah Lipstadt, whose testimony Cantwell also objects to as irrelevant as pled in his Motion In Limine To Exclude All Evidence Of Defendants' Biases Against Those Who Identify As "Jews" Pursuant To Fed.R.Evid. 401, 402, and, 403;
- b) Peter Simi;
- c) Sharon Reavis, for whom Cantwell has two expert reports but apparently not all of her reports.

5) Cantwell objects to the introduction of the deposition testimony of the following witnesses as he was not permitted to appear at the depositions and cross examine these witnesses or make objections and because their depositions have not been disclosed to him so he cannot object now:

- a) Erica Alduino;
- b) Robert Ike Baker;
- c) Patrick Casey;
- d) Michael Chesny;
- e) Burt Colucci;
- f) ~~Benjamin Drake Bailey~~;

- g) Shane Duffy;
 - h) Samantha Froelich;
 - i) Bradley Griffin;
 - j) Dillon Izarry, aka Dillon Hopper. Cantwell also objects to referring to him as "Dillon Hopper", a farcical pseudonym;
 - k) Vasilios Pistoilis;
 - l) Thomas Rouseeau.
- 6) Cantwell also objects to the following persons on the Plaintiff's list of "additional witnesses" being called at trial because the Plaintiff's have not previously disclosed either them or their expert reports to him:
- a) Clark Baumbusch;
 - b) Kathleen Blee;
 - c) Donna Broshek;
 - d) Thomas Clay;
 - e) James Collins;
 - f) Melissa Elliot;
 - g) Ted Galbraith;
 - h) Janice Gilmore;
 - i) Frank Gwathmey;
 - j) Thomas Hartka;
 - k) Martha McCoy;
 - l) Rebekah Menning;
 - m) Brant Meyer;
 - n) Pam Nadell. Cantwell also makes the same objection to her testimony as to Lipstadt's, that it is irrelevant as pled in his Motion in Limine to Exclude All Evidence Of Defendants' Biases Against Those Who Identify As "Jews" Pursuant To Fed.R.Evid. 401, 402, And 403;

- o) Robert O'Connor;
- p) Andrea Roberts;
- q) Larry Sabato;
- r) Carol Sims;
- s) Julie Solomon;
- t) Angela Tabler;
- u) Sarah Vinson;
- v) Michael Webster;
- w) Chad Wellmon;
- x) Steven Wolf;
- y) Steve Young;
- z) Tyler Yutzy.

Respectfully Submitted,



Christopher Cantwell
USP-Marion
PO Box 1000
Marion, IL 62959

CERTIFICATE OF SERVICE

I hereby certify that these Objections were mailed to the Clerk of the Court, 1st Class Postage Prepaid, for posting on the ECF system to which all parties are subscribed, and, handed to USP-Marion staff members Nathan Simpkins and/or Kathy Hill for electronic transmission to the Court, this 17th day of September, 2021.



Christopher Cantwell

WESTERN DISTRICT OF VIRGINIA

Charlottesville Division

1098

Elizabeth Sines, et al

Plaintiffs

v

Case No: 3:17-cv-072-NKM

Jason Kessler, et al

Defendants

MOTION FOR DISCOVERY SANCTIONS AGAINST PLAINTIFFS FOR
FAILURE TO TIMELY DISCLOSE THE "DISCORD PRODUCTION" PURSUANT
TO FED.R.CIV.P. 37

Comes now the Defendant, Christopher Cantwell, and, he Moves this Court to Sanction all of the Plaintiffs Pursuant to Fed.R.Civ.P. 37 For Failure To Timely Disclose The "Discord Production" to himself and the other pro se Defendants, including Richard Spencer, Robert Ray, Vanguard America, and, Eliot Kline. In support, he states as follows:

- 1) Discovery in this matter closed April 30, 2021.
- 2) On September 3, 2021, Plaintiff's counsel Michael Bloch disclosed to Cantwell the existence of production by Discord (the "Discord production") as per the attached email. In his email, Bloc admits that he did not timely disclose this material to Cantwell or to any of the other pro se Defendants, timely move to modify the protective order he believes limited the circulation of this material so that it could be produced to Cantwell, or, even notice Cantwell of the existence of this material so that Cantwell could move to modify the protective order.
- 3) Further, while Cantwell has received notice of the existence of this

Discord Production, Cantwell has still not received the actual

production. (However, Cantwell notes that he received a hard drive with unknown contents from a different attorney representing Defendants today which he has not yet been able to examine).

- 4) Fed.R.Civ.P. 37(a)-(c) provides for the sanction of parties who fail to make disclosures or who make disclosures that are evasive or incomplete. This disclosure came about as the result of discussions between Defendant Cantwell, the Court, and, Plaintiff's counsel on, August 20, 2021, and, Cantwell believes that suffices as a good faith effort to resolve this issue. The fact is that the Defendants' refusal to disclose this evidence which is central to their case prevented Cantwell from conducting meaningful discovery regarding the Discord production, and, thus, has prevented Cantwell from fully and fairly litigating issues surrounding this Discord production.
- 5) Because this material was not timely produced and Cantwell was not timely notified of its existence so that he could seek its production, Cantwell has been unable to conduct discovery regarding this material, and, it should be excluded from use as evidence in this matter pursuant to Fed.R.Civ.P. 37(c)(1).

Thus, for good cause shown, Cantwell moves this Court to sanction the Plaintiffs by excluding from use at trial any of the "Discord Production".

Respectfully Submitted,



Christopher Cantwell
USP-Marion
PO Box 1000
Marion, IL 62959

CERTIFICATE OF SERVICE

I hereby certify that this Motion for Discovery Sanctions was mailed to the Clerk of the Court, 1st Class Postage prepaid, for posting upon the ECF, to which all parties are subscribed, and, was handed to USP-Marion staff members Nathan Simpkins and/or Kathy Hill for electronic transmission to the Court, this 17th day of September, 2021.



Christopher Cantwell

From: Michael Bloch

Sent: Friday, September 3, 2021 1:47 PM

To: 'Hoppe_Chambers.ecf@vawd.uscourts.gov' <Hoppe_Chambers.ecf@vawd.uscourts.gov>; 'alevine@cooley.com' <alevine@cooley.com>; 'brottenborn@woodsrogers.com' <brottenborn@woodsrogers.com>; 'bryan@bjoneslegal.com' <bryan@bjoneslegal.com>; 'dcampbell@dhdgclaw.com' <dcampbell@dhdgclaw.com>; 'dillon_hopper@protonmail.com' <dillon_hopper@protonmail.com>; 'dmills@cooley.com' <dmills@cooley.com>; 'eli.f.mosley@gmail.com' <eli.f.mosley@gmail.com>; 'Phillips, Jessica E' <jphillips@paulweiss.com>; 'kdunn@paulweiss.com' <kdunn@paulweiss.com>; 'wisaacson@paulweiss.com' <wisaacson@paulweiss.com>; Roberta Kaplan <rkaplan@kaplanhecker.com>; 'Edward ReBrook, ESQ' <rebrooklaw@gmail.com>; 'James Kolenich' <jek318@gmail.com>; 'Richard Spencer' <richardbspencer@gmail.com>; 'hoppe.ecf@vawd.uscourts.gov' <hoppe.ecf@vawd.uscourts.gov>; 'deplorabletruth@gmail.com' <deplorabletruth@gmail.com>; 'Josh Smith' <joshsmith2020@gmail.com>

Cc: 'KarenD@vawd.uscourts.gov' <KarenD@vawd.uscourts.gov>

Subject: Sines v. Kessler, Case No. 17 Civ. 72

Dear Judge Hoppe:

Following up on our August 20th confidential status conference, Plaintiffs have conferred with counsel for Discord who has agreed to de-designate the entirety of its document productions as Confidential under the operative protective order. As discussed, Discord's productions were previously marked Highly Confidential (effectively Attorneys' Eyes Only), which prevented Plaintiffs from producing the Discord productions to *pro se* Defendants. This de-designation enables Plaintiffs to now produce Discord's documents to the *pro se* Defendants, which we are in the process of doing. We have additionally requested that Discord consider removing entirely all confidentiality designations in advance of trial to streamline the presentation of that evidence, and we are informed that Discord is actively considering that request.

Additionally, Plaintiffs are currently in the process of de-designating certain documents currently marked Highly Confidential that Plaintiffs intend to use at trial, so that they may be

produced to *pro se* Defendants in advance of trial. Plaintiffs further note that a substantial number of documents produced by Defendants have been marked Confidential or Highly Confidential under the protective order. Plaintiffs are in the process of meeting and conferring with Defendants regarding those designations in an effort to resolve any designation issues without Court involvement so that they can be used at trial.

Respectfully submitted,

Michael Bloch | Kaplan Hecker & Fink LLP

Counsel

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